IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1762 OF 2004

Viresh N.Tolia ...Petitioner

Versus

Shri Vijay Kumar P. & Anr. ...Respondents

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Mr.D.S.Joshi i/b Mr.I.R.Kulkarni for Petitioner.

Mr.K.V.Saste, A.P.P. for Respondent No.2.

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**CORAM: A.M.KHANWILKAR, J.**

**OCTOBER 8, 2004.**

**P.C.**

1. Heard Counsel for the Petitioner.

2. Petitioner has lodged complaint for dishonour of cheque against the Respondents. The Trial Court by order dated 17th July 2004, has issued process only against the Company and Dr.R.R.Reddy, who are accused Nos.1 and 2 respectively, and not against the Respondent who has been named as accused No.3 being Director of

accused No.1 Company. Learned Counsel for the Petitioner submits that since the Respondent was the Director, he was also liable to be prosecuted for the dishonour of cheque issued, for and on behalf of the Company and for which reason, the order as passed by the Magistrate, which tantamounts to declining to issue process against the Respondent No.3, is inappropriate.

3. Reliance is placed on Section 141 of the Negotiable Instruments Act to support this submission. In addition, reliance is also placed on the reported decision of Gujarat High Court reported in **2000 Cri.L.J.1043 in the case of Smt.M.Sivakami v. Bharat Ginning & Oil Mill Factory & Anr., decision of Bombay High Court reported in 1998 Cri.L.J.4350 in the case of M/s.Yashomala Engineering Pvt.Ltd. & Ors. v. Tata SSL Ltd. & Anr. and of Andhra Pradesh High Court reported in 1998 Cri.L.J. 43 in the case of Suraj Theatre & Ors. v. Smt.Kakarla Bhorathe & Anr.** None of the aforesaid decisions, to my mind, are applicable in the fact situation of the present case.

4. The submission canvassed before this Court clearly overlooks the fact that the cheque has been signed by accused No.2. Assuming that it has been issued by accused No.2 for and on behalf of accused No.1 Company, it is not in dispute that the accused No.2 is the Chief Executive Officer and the person in-charge of, and responsible in relation to the affairs of the Company. It is in that backdrop, the Court has issued process only qua accused Nos. 1 and 2. Indeed, accused No.3 is stated to be Director. That alone cannot be the basis to prosecute the accused No.3. In the present case, the concerned person has already been named as the accused, and process has been issued against Respondent No.2 who is the signatory to the disputed cheques issued for an on behalf of the accused No.1 Company.

5. In these circumstances, no fault can be found with the Trial Court in issuing process only against Accused 1 and 2. Hence, Petition dismissed.

A.M.KHANWILKAR, J.